

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )

Review of the Pioneer's )  
Preference Rules )ET Docket No. 93-266COMMENTS OF THE NYNEX CORPORATION

NYNEX Corporation (hereinafter "NYNEX"), by its attorneys, respectfully submits the following comments in response to the Notice of Proposed Rulemaking (hereinafter "Notice") released by the Commission on October 21, 1993, in the above-captioned proceeding.

I. INTRODUCTION AND SUMMARY

In the Notice, the Commission seeks comment on whether its pioneer's preference rules should remain in effect as they currently exist, be modified to take into account the Commission's competitive bidding authority recently granted by Congress,<sup>1</sup> or be repealed.

NYNEX believes that it would be inappropriate to exclude holders of pioneer's preferences from the competitive

<sup>1</sup> Section 3(j), recently added to the Communications Act of 1934 by the Omnibus Budget Reconciliation Act of 1993 ("Budget Act"), Pub. L. No. 103-66, Title IV, 6002(b), 107 Stat. 312, 392 (1993), gives the Commission express authority to use competitive bidding to choose among mutually exclusive applications for initial spectrum licenses.

bidding procedures adopted by the Commission in PP Docket No. 93-253.<sup>2</sup> Pioneer's preference licensees should compete for spectrum licenses and, should they win, be eligible for the discounts and the same financial arrangements offered to "designated entities" under the competitive bidding rules. This approach would create incentives that foster innovation and, as we further demonstrate below, would achieve the greatest total social benefit.

II. THE PIONEER'S PREFERENCE RULES SHOULD REQUIRE INNOVATORS TO PARTICIPATE IN AUCTIONS AND ALLOW MARKETPLACE FORCES TO DETERMINE THE VALUE OF INNOVATION

The pioneer's preference rules were adopted by the Commission to foster the development of new wireless telecommunications technologies by granting spectrum licenses to applicants who propose to offer services using innovative technologies. The rules were intended to reduce the delays and risks technology innovators faced in obtaining licenses through random selection (e.g., lottery) or comparative hearing processes.<sup>3</sup>

NYNEX supports the Commission's public interest objective to foster innovative spectrum-based technologies. NYNEX agrees with the Commission that the enactment of the

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<sup>2</sup> Implementation of Section 309(j) of the Communications Act, Competitive Bidding, PP Docket No. 93-253, FCC 93-455, Notice of Proposed Rulemaking, released October 12, 1993.

<sup>3</sup> Notice at ¶¶5-6.

competitive bidding procedures embodied in the Budget Act undermines the basis for the pioneer's preference rules.<sup>4</sup>

The spectrum is a valuable, scarce resource. Requiring that all licenses be competitively awarded, including those for pioneer's preference applicants, promotes economic efficiency by allowing the competitive market to determine the value of innovation. By requiring pioneer's preference holders to participate in the competitive bidding process, the Commission would ensure that all eligible parties may participate in spectrum auctions and that spectrum is placed in the hands of those parties who place the highest value on the resource. This approach would maximize revenues derived from spectrum auctions because a firm that has developed an efficiency-enhancing technology or a truly innovative new service is likely to be willing to pay more for spectrum than a firm that plans to offer traditional services using existing technology.

We believe that, in order to advance the objective of promoting innovation, licensees who qualify for pioneer's preferences should be entitled to receive a discount or some other special financial arrangement, should they win the auction by submitting the highest bid. In addition to an appropriate discount, pioneer's preference licensees should be

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<sup>4</sup> Notice at ¶7. The Budget Act permits, but does not require, the Commission to continue to implement a pioneer's preference policy. But before doing so, the Commission is required to determine that such a policy would be consistent with the objectives sought to be achieved by the Budget Act.

entitled to special financial arrangements including, for example, tax credits and alternate payment schedules. These arrangements will enable qualified pioneer's preference licensees who truly believe in the innovation they have developed to compete aggressively for spectrum in a competitive bidding environment that is not encumbered with the delay and risks associated with lotteries and comparative hearings. Discounts and other special financial arrangements are particularly well-suited to promote innovation in the capital-intensive telecommunications industry where many innovators are likely to face financial challenges in bringing their technological developments to customers.<sup>5</sup>

### III. CONCLUSION

The public interest is best served by the Commission designing rules that provide incentives for technological innovation without hindering the marketplace forces that impact competitive bidding. We believe that awarding all mutually exclusive licenses using competitive bidding, with special


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<sup>5</sup> See, Notice at ¶8.

financial arrangements available to qualified pioneer preference licensees, will best serve the public interest in promoting the full deployment of innovative wireless services.

Respectfully submitted,

NYNEX CORPORATION

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